

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Steffensmeier et al.

Title: METHOD AND APPARATUS
FOR EXTENDING THE LIFE
OF MATRIX ADDRESSED
EMISSIVE DISPLAY DEVICES

Appl. No.: 09/648,830

Filing Date: 08/25/2000

Examiner: Nguyen, Kevin M.

Art Unit: 2629

Confirmation 6297

Number:

Mail Stop **PETITION**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION REQUESTING WITHDRAWAL OF THE HOLDING OF
ABANDONMENT UNDER 37 C.F.R. § 1.181(a), OR IN THE ALTERNATIVE,
PETITION FOR REVIVAL OF APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

On February 27, 2008, a Notification of Abandonment was mailed alleging that the present Application became abandoned in view of the decision by the Board of Patent Appeals and Interferences rendered on December 14, 2007 (“the Decision on Appeal”) and because the period for seeking court review of the decision has expired and there are no allowed claims.

I. **Petition Requesting Withdrawal of the Holding of Abandonment Under 37 C.F.R. § 1.181(a)**

Applicants submit that the Notice of Abandonment was issued in error and request that the Notice of Abandonment be withdrawn under 37 C.F.R. § 1.181(a).

Applicants believe that the Notification of Abandonment was issued in error because the Examiner mishandled and/or misinterpreted the Decision on Appeal after the file was returned to

the Examiner from the Board of Patent Appeals and Interferences. The Decision on Appeal reversed the rejection of dependent Claims 4, 11 and 18 and affirmed the rejection of Claims 1-3, 5-10, 12-17, 19 and 20. As such, as of February 14, 2008 (two months after the mailing of the Decision on Appeal), the Examiner was required to either (1) convert dependent Claims 4, 11 and 18 into independent form by Examiner's Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or (2) set a 1-month time limit in which Applicants may rewrite the dependent claims in independent form. See M.P.E.P. § 1214.06(I)(B). Neither action has yet been taken by the Examiner, and therefore, the Application should not be considered abandoned.

For convenient reference, Applicants provide the following timeline of events for the present Application:

(1) On September 8, 2006, Applicants filed an appeal under 35 U.S.C. § 134 from a final rejection of Claims 1-20.

(2) On December 14, 2007, the Board of Patent Appeals and Interferences rendered a decision that, as stated above, reversed the rejection of dependent Claims 4, 11 and 18 and affirmed the rejection of Claims 1-3, 5-10, 12-17, 19 and 20.

(3) Pursuant to 37 C.F.R. § 1.304, Applicants had two months from the mailing of the Decision on Appeal to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. No such action was taken by Applicants. Instead, Applicants were waiting to receive an Office communication from the Examiner notifying Applicants that the appropriate action had been taken by the Examiner as set forth in M.P.E.P. § 1214.06(I)(B) or asking Applicants to take such action.

(4) As set forth in M.P.E.P. § 1214.06(I)(B), after Applicants did not appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action within two months from the mailing of the Decision on Appeal, the Examiner was required to either (1) convert dependent Claims 4, 11 and 18 into independent form by Examiner's Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or (2) set a 1-month time limit in which Applicants may rewrite the dependent claims in independent form. Rather than comply with the requirements of M.P.E.P. § 1214.06(I)(B), the Examiner improperly mailed a Notification of Abandonment on February 27, 2008.

Accordingly, because the Examiner has not yet taken appropriate action in accordance with M.P.E.P. § 1214.06(I)(B), Applicants submit that the Notification of Abandonment should be withdrawn and the present Application should be considered to never have been abandoned.

Applicants are aware that this petition is being filed after the two-month time period set forth in 37 C.F.R. § 1.181(f). However, Applicants note that M.P.E.P. § 711.03(c)(I)(C) provides that “[r]ather than dismiss an untimely petition to withdraw the holding of abandonment

under 37 C.F.R. § 1.181(a), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.” As such, it appears that the Office may still consider a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed more than two months after the mailing of the Notification of Abandonment. Applicants would be willing to submit a terminal disclaimer if required for the granting of this petition.

II. Petition For Revival of Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)

In the alternative, if the Office of Petitions dismisses the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) for being untimely and/or for any other reason, and the Office of Petitions determines that the present Application is indeed abandoned, Applicants hereby petition for revival of the present Application under 37 C.F.R. § 1.137(b) and submit the following:

(1) Required Reply and/or Fee.

Applicants submit that no reply and/or fee is required at this time. As set forth above, Applicants are waiting for the Examiner to either (1) convert dependent Claims 4, 11 and 18 into independent form by Examiner’s Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or (2) set a 1-month time limit in which Applicants may rewrite the dependent claims in independent form. Applicants were not required to take any action after receiving the Decision on Appeal without first receiving an Office communication from the Examiner. However, in an effort to advance the prosecution of the present Application, Applicants have included a Reply with this petition in which Claims 4, 11 and 18 have been rewritten into independent form. Applicants submit that upon entry of such a Reply, the present Application will be in condition for allowance.

(2) Petition Fee (37 C.F.R. § 1.17(m)).

While Applicants are hopeful that the petition under 37 C.F.R. § 1.181(a) will be successful (for which no fee would be required), the Commissioner is hereby authorized to charge any fees, including fees in the amount of \$1620.00 set forth in 37 C.F.R. § 1.17(m) to cover the fee for a petition under 37 C.F.R. § 1.137(b), which may be required regarding the present Application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 18-1722.

(3) Statement that the Abandonment was Unintentional.

Applicants hereby state that the entire delay, from the mailing of the Notification of Abandonment, and/or the two-month period after the mailing of the Decision on Appeal, until the filing of this Petition, was unintentional.

(4) Terminal Disclaimer (37 C.F.R. § 1.137(d)).

Applicants submit that no terminal disclaimer is required in the present Application under 37 C.F.R. § 1.137(d)(1) since the present Application is neither a design application, nor a utility or plant application filed before June 8, 1995.

* * *

As set forth above, Applicants submit that the Notification of Abandonment should be withdrawn and that the Application should be returned to the Examiner to put the claims in a condition for issuance or for requesting Applicants to put the claims in a condition for issuance. In the alternative, Applicants submit that the present Application should be revived, and again, should be returned to the Examiner to put the claims in a condition for issuance or for requesting Applicants to put the claims in a condition for issuance.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding the present Application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 18-1722.

Should no proper payment be enclosed herewith, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 18-1722. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 18-1722.

Respectfully submitted,

Date January 8, 2009

By /Joseph N. Ziebert/

Customer Number: 26383
Telephone: (319) 295-8280
Facsimile: (319) 295-8777

Joseph N. Ziebert
FOLEY & LARDNER LLP
Attorney for Applicants
Registration No. 35,421